acting as such, but not in one's own business as engineer. The mere doing of the work of the profession does not, in all cases, constitute such work the "business" of the person doing it, for, where one employed by another is an independent contractor, he is engaged in his own "business;" otherwise, when he is a mere servant or ordinary employee.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Business. For other cases, see 9 Va.-W. Va. Enc. Dig. 312.]

Error to Circuit Court, Lunenburg County.

H. H. Derrick was convicted of engaging in the business of civil engineer for compensation without having procured a license, and he brings error. Order reversed.

Theo W. Reath, of Philadelphia, Pa.; *J. M. Crute,* of Farmville, and *F. S. Kirkpatrick,* of Lynchburg, for plaintiff in error.

The Attorney General, for the Commonwealth.

BERLIN *v.* WALL et al.

March 21, 1918.

[95 S. E. 394.]

1. Negligence (§ 136 (1)*)—Question of Law.—If the facts as to alleged negligence are clear and undisputed, the court must say as a matter of law whether they constitute negligence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 422.]

2. Landlord and Tenant (§ 164 (1)*)—Defective Skylight—Personal Injury—Liability.—Although the lessee who had leased three rooms on the second floor, and his family, including plaintiff, six years old, were entitled, in common with other tenants, to the use of a room in which was a skylight guarded by a railing about 32 inches high, consisting of three strips of plank three inches wide and a top rail, plaintiff could not recover because, while at play in said room, he climbed or fell through the opening between the planks of the railing, or from the top thereof, through the skylight to the floor beneath, the danger being as obvious to the lessee who had occupied the premises for 14 months, while the same condition existed, as to the lessor, although the glass, which was covered with dust, was not the kind generally used for skylights, and the railing was a warning that the lessor had reserved the part of the room taken up by the skylight to give light to the tenant below.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 166.]

3. Negligence (§ 121 (1)*)—Existence of Duty.—In an action for personal injuries alleged to have been occasioned by the negligence

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*For other cases, see same opic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

or default of another, it must be shown that defendant owed some duty or obligation to the party injured which he failed to discharge.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 357.]

4. Negligence (§ 3*)—Degree of Care—"Proper Care."—"Proper care" does not require the anticipation of every accident that can happen, or the providing of every conceivable safeguard for the prevention of a ıy possibility of accident, but the exercise of reasonable care to avoid accidents which, according to observation and experience, are likely to happen.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Proper Care. For other cases, see 10 Va.-W. Va. Enc. Dig. 354.]

5. Landlord and Tenant (§ 164 (1)*)—Personal Injuries—Liability.—While it is the duty of the landlord to keep in repair that portion of the leased premises which he retains for the use of the several tenants in common, he is not liable to the tenant or members of his family, whether infant or adult, for the defective condition or faulty construction of the leased premises, over which the tenant has exclusive control, existing at the time of the lease, in the absence of misrepresentation, active concealment, or perhaps total inability on the tenant's part to discover the defect.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 166.]

Error to Circuit Court of City of Lynchburg.

Action by Saul Berlin, an infant, by Israel Berlin, his father and next friend, against Ellen M. Wall and others. The trial court sustained a demurrer to the declaration, entered judgment thereon for defendants, and the plaintiff brings error. Affirmed.

Amonette & Bailey, John L. Lee, and *R. C. Blackford,* all of Lynchburg, for plaintiff in error.

N. C. Manson, Jr., of Lynchburg, for defendants in error.

HECHLER'S EX'X et al. *v.* KEMP, County Treasurer.

March 21, 1918.

[95 S. E. 400.]

1. Counties (§ 101 (5)*)—School Districts—Money Illegally Retained by County Treasurer—Remedy.—Where the entire fund arising out of proceedings annexing territory of a county to a city was decreed to be paid to the county, the fund was within Code 1904, § 862, providing that the county treasurer shall deliver to his successor "all money belonging to the county," so that, where the supervisors apportioned among the several school districts of the county their just proportion of the fund and directed the treasurer to place the

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.